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January 24, 2019

VIA ECF and Email

The Honorable Freda L. Wolfson, U.S.D.J.
The Honorable Lois H. Goodman, U.S.M.J.
United States District Court
Clarkson S. Fisher Building & US Courthouse
402 East State Street
Trenton, NJ 08608

Re: *In re: Johnson & Johnson Talcum Powder Products Marketing, Sales Practices, and Products Liability Litigation, MDL No. 2738*

Dear Judge Wolfson:

Imerys hereby submits, without argument, the following supplemental authority. On January 22, 2019, in the trial of Dianne Henson v. Colgate et al, Superior Court of California, JCCP Case No. 3674, Case No. BC702253, The Honorable Armen Tamzarian evaluated the exact same issue currently before the Court with respect to applicability of Julie Pier's marital communications privilege and the documents at issue. Judge Tamzarian found that the marital privilege applied. A copy of the transcript is attached for Your Honor's consideration. (See Pages 151-163).

Respectfully submitted,
COUGHLIN DUFFY LLP

/s/ Mark K. Silver
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MKS/

cc: Plaintiffs' Steering Committee (via ECF and e-mail)
Susan Sharko, Esq. (via ECF and e-mail)
Thomas Locke, Esq. (via ECF and email)

In the Matter Of:

DIANNE HENSON vs COLGATE-PALMOLIVE COMPANY

HENSON TRIAL - P.M.

January 22, 2019

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CASE NAME:

CASE NUMBER:

ALHAMBRA, CALIFORNIA

DEPARTMENT 3

REPORTER:

APPEARANCES:

TIME:

DIANNE HENSON VS.
COLGATE-PALMOLIVE COMPANY
BC702253
JANUARY 22, 2019
HON. ARMEN TAMZARIAN
DEBORAH MORIN, CSR NO. 11558
(AS HERETOFORE MENTIONED.)
1:39 P.M.

(THE FOLLOWING PROCEEDINGS HELD IN OPEN
COURT OUTSIDE THE PRESENCE OF THE JURY:)

THE COURT: Okay. I have a document in front
of me. It seems to be an e-mail dated March 22, 2004,
from Julie Pier to Robert Pier. Has this been marked as
one of the exhibits for trial or not?
MR. GEORGE: It is a trial exhibit. I don't
know exactly what exhibit number it is.
MR. POPOVICH: I do. It is Plaintiff's
Exhibit 1089.
THE COURT: All right. And I take it -- well,
first let me ask. Is this going to be put in front of a
witness that is going to testify about this?
MR. GEORGE: Julie Pier is the most
knowledgeable for Imerys. And during the course of her
deposition, this document came up and she testified
about it.
THE COURT: Okay. So are you going to call

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I N D E X
JANUARY 22, 2019; P.M. SESSION
CHRONOLOGICAL INDEX OF WITNESSES

PLAINTIFF'S
PIER, JULIE
(VIDEO PLAYBACK, NOT REPORTED)

DIRECT
188

CROSS

REDIRECT

RECROSS

DEFENDANTS'
(NONE)

DIRECT

CROSS

REDIRECT

RECROSS

EXHIBITS

PLAINTIFF'S
EXHIBIT
(NONE)

MARKED
FOR I.D.

RECEIVED
IN EVD.

WITHDRAWN
OR REJECTED

DEFENDANTS'
EXHIBIT
(NONE)

MARKED
FOR I.D.

RECEIVED
IN EVD.

WITHDRAWN
OR REJECTED

(COURT EXHIBIT NO. 1 MARKED AT PAGE 184.)

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Julie Pier?

MR. GEORGE: She's our next witness by video.
It's about an hour and 20 minutes.
THE COURT: I got it. And there's an
objection to this document by Imerys. True?
MR. POPOVICH: Yes.
THE COURT: What is the objection?
MR. POPOVICH: Marital privilege.
THE COURT: Is that the only objection?
MR. POPOVICH: 352 as well, which I can
explain as part of the argument.
THE COURT: Was the marital privilege
objection -- that was in front of Judge Byrdsong?
MR. GEORGE: Yes.
MR. POPOVICH: Yes. And he denied it without
prejudice.
MR. GEORGE: It was actually before him twice.
Once in an MIL and it was also -- the objection was made
when he did the page/lines. And he overruled it for the
page/lines.
THE COURT: There should be an Evidence Code.
MR. GEORGE: Here we go. 980, confidential
spousal communications privilege.
MR. POPOVICH: Sounds right, Your Honor.
THE COURT: Let me hear from plaintiff first.
Why does the marital privilege not apply?
MR. GEORGE: Because this was an e-mail that
was done on a business server and there was no

<p style="text-align: right;">Page 153</p> <p>1 expectation of privacy, which is an objective standard. 2 And that's what Judge Byrdsong -- his tentative ruling 3 was. 4 MR. POPOVICH: And I can explain why this case 5 is different. 6 THE COURT: You would agree with the general 7 premise that if two people work for a company and they 8 talk to each other about company business, the marital 9 privilege doesn't apply. 10 MR. POPOVICH: Well, first of all, her husband 11 does not work for the same company she does. The 12 husband does not work for us. He works out on oil 13 platforms out in the middle of the ocean. 14 But the answer to that, unfortunately Your 15 Honor hasn't had the benefit of the MIL. It was defense 16 MIL No. 7. And I believe there is case law that 17 indicates that even if they're talking about work, 18 there's still a privilege. 19 It is a privilege we want to protect that a 20 husband and wife can talk and vent, which is what she's 21 doing in that e-mail, but it comes down to whether she 22 had an expectation, I believe. 23 There's no question it was a communication 24 between a wife and her husband. The question is did she 25 have a reasonable expectation of privacy by using a work 26 computer on a work server to send the e-mail to her 27 husband, who was far away and they would be out of 28 communication for periods of time.</p>	<p style="text-align: right;">Page 155</p> <p>1 MR. POPOVICH: Correct. And I could read 2 directly from her declaration which was in support of 3 the MIL. Paragraph 4 of her declaration said: 4 "I called my employer's I.T. 5 department and was informed that corporate 6 policy discouraged personal communications 7 from work computers. I asked for a 8 special exception based upon Robert's" -- 9 her husband -- "travel situation and how 10 complex our work schedules are, 11 emphasizing that we often cannot 12 communicate by phone and often can only 13 reach each other at odd hours. My request 14 to privately communicate with my husband 15 using my work computer was granted and the 16 I.T. department also installed the instant 17 messaging service. 18 "I thereafter communicated with my 19 husband on both instant messaging and 20 using my work e-mail address on my work 21 computer with the knowledge that those 22 communications would remain private." 23 We would argue that subjectively she believed 24 that she was having private communications. When 25 discovery happened and tens of thousands of documents 26 were produced, it got swept up in it, and it wasn't 27 realized until after it was disclosed and turned over to 28 plaintiff's counsel in another case.</p>
<p style="text-align: right;">Page 154</p> <p>1 So if I could address why this is different. 2 Why this is different is because of the nature of her 3 husband's work. Ms. Pier would often be out of contact 4 with her husband for days, even a week at a time. They 5 have children during this time. So it became difficult 6 for her when she got promoted to the position she was in 7 at the time of this e-mail to communicate with her 8 husband because of different time zones and his work 9 schedule, and when he would have access to communication 10 to her often came when she was at work. 11 She asked her company for a special system 12 through which she could communicate with her husband. 13 The company's policy was not to allow personal 14 communications like that on the company's equipment, but 15 she asked for special permission and got it because of 16 their unique situation. So because of that, we argue 17 that she did have an expectation of privacy. 18 Now, it came about in the sweep for documents 19 in response to discovery when literally tens of 20 thousands of documents were produced -- 21 THE COURT: Let me back up on that point. So 22 before this communication on March 22, 2004, she 23 actually had a discussion with her company to see if she 24 could get an exception to the rule that she couldn't use 25 the company server for e-mails? 26 MR. POPOVICH: For personal, yes. 27 THE COURT: For personal. So this is before 28 this date. It wasn't afterwards.</p>	<p style="text-align: right;">Page 156</p> <p>1 THE COURT: But isn't it an objective 2 standard, I would imagine. 3 MR. POPOVICH: My argument is that it is 4 subjective as to whether she has reasonable expectation 5 of privacy. I would argue that it is a subjective 6 standard. And there is a different code section, which 7 I have the original argument, that indicates that it is 8 her privilege to hold or waive. 9 Waiver must be knowing. That makes it a 10 subjective standard. She did not subjectively give a 11 knowing waiver. 12 THE COURT: Wait a minute. I agree the waiver 13 part is subjective, but when you have the reasonable 14 expectation of privacy, that means it's an objective 15 standard. 16 The first issue is does the privilege apply at 17 all. So if on an objective basis it does apply, then 18 she can only waive it subjectively. On an objective 19 basis, if it does not apply, well, then you don't even 20 get to an issue of waiver. 21 So I think the first step, if everybody agrees 22 it's a reasonable expectation of privacy, that means 23 objective. She could still waive it, even if the 24 privilege applies, and that would be subjective. Do you 25 disagree with that analysis? 26 MR. POPOVICH: I can't disagree with Court's 27 logic. But going back to 980, it doesn't really talk 28 about a reasonable expectation of privacy. It talks</p>

<p style="text-align: right;">Page 157</p> <p>1 about it was during the marital or domestic partnership 2 relationship -- I don't think that is disputed -- that 3 it was a communication between a husband and wife, and 4 it was made in confidence between him or her and the 5 other spouse while they were spouses. 6 I think all of those conditions apply. And 7 then as it says -- it refers back to section 912, which 8 is the waiver. 9 THE COURT: Waiver is a second step of the 10 analysis. It's not part of it. Wouldn't you agree the 11 case law interprets this as an objective analysis? 12 Let me give you an example. It isn't these 13 facts. Okay. And she says, let's say, at a meeting of 14 the company some statement and he's there. Objectively, 15 she doesn't have any privacy. Whether she thinks so in 16 her mind or not really doesn't matter. 17 On an objective level, if she's blurting this 18 stuff out in front of other people, there's no 19 expectation of privacy. That's an objective analysis. 20 So you still have an argument, but I'm having trouble. 21 MR. POPOVICH: I agree with the Court saying 22 that. It comes down to under an objective standard, as 23 the Court has identified, it was reasonable for her to 24 have that expectation that her communications with her 25 husband were in confidence given that she took the extra 26 step she did in order to make that happen. 27 THE COURT: Let me ask this. So does this 28 guy, Robert Pier, have anything to do with company</p>	<p style="text-align: right;">Page 159</p> <p>1 proposition. If you're using company equipment to 2 e-mail to yourself about something while you're working 3 at the company, you don't have a reasonable expectation 4 of privacy. I would agree with that general 5 proposition. I haven't researched it, but that sounds 6 right to me. 7 MR. GEORGE: But under these facts, if in fact 8 she was given permission, don't they have the burden of 9 showing that since they're trying to establish a 10 protection? Don't they have the burden of showing that 11 in fact these procedures were instituted and therefore 12 she had a basis for expectation of privacy? 13 THE COURT: Let me hear from defendant on that 14 issue. 15 MR. POPOVICH: Paragraph 4 of her declaration 16 starts, in February of 2003, I had these issues. It 17 goes through the part that I've already read into the 18 record and it indicates that the I.T. department also 19 installed the instant messaging service in response to 20 her request. 21 "I thereafter communicated with my husband on 22 both instant messaging and using my work e-mail 23 address." 24 THE COURT: Could you hand that declaration to 25 the clerk. 26 So you're saying the word "thereafter" implies 27 that it was after it was installed? 28 MR. POPOVICH: Yes.</p>
<p style="text-align: right;">Page 158</p> <p>1 business or it's just her husband? 2 MR. POPOVICH: Nothing to do with company 3 business. She was venting to him about company issues, 4 as a wife would to a husband. 5 THE COURT: Let me hear from plaintiff. If 6 that's true and she got this special permission to use 7 company e-mail, wouldn't that be an exception to the 8 general rule that if you use the company e-mail you have 9 no expectation of privacy? 10 MR. GEORGE: Well, one thing about her 11 declaration, she never says when they actually 12 instituted this process. So if she did that -- all she 13 says is that I asked them in February of 2003, and at 14 some time -- there's nothing in the declaration that 15 says when -- they agreed with me, and then sometime 16 thereafter I communicated with my husband on both 17 instant messaging and the other e-mail. 18 So there's no -- at least in the declaration, 19 there's no support for her conclusion that she had an 20 expectation of privacy because all these special 21 procedures had been instituted. 22 THE COURT: So maybe the procedures were 23 instituted after this date and she should have been 24 cautious? 25 MR. GEORGE: Yes. You don't have an objective 26 expectation of privacy here if you e-mail your spouse on 27 company time. 28 THE COURT: I agree with that as a general</p>	<p style="text-align: right;">Page 160</p> <p>1 MR. GEORGE: Understood. But there's no time 2 limit for either when they installed it or the 3 thereafter. 4 THE COURT: What do you mean by there's no 5 time limit? 6 MR. GEORGE: They said, okay, I asked my 7 company in 2003 to do this. She never says that they 8 did it on December of 2003. So we know it's prior to 9 this e-mail. We don't know when they instituted. It 10 could have taken them a year, for all we know. It's not 11 in the declaration. 12 And I maintain it's their burden since they're 13 asserting the privilege to have the facts necessary to 14 assert it. 15 THE COURT: All right. I just want to read 16 this quickly and then I have to make a decision. 17 Where was the part you said that the company 18 installed something? Do you remember? 19 MR. POPOVICH: Paragraph 4. 20 THE COURT: Okay. 21 22 [Brief pause.] 23 24 THE COURT: I think a fair reading of 25 Paragraph 4 is that the sequence of events was these 26 communications happened after this system was installed. 27 I would agree with you. We don't know precisely when, 28 but we do know the order and that's what matters.</p>

<p style="text-align: right;">Page 161</p> <p>1 If they installed a system for instant 2 messaging and also the permission was granted for the 3 private communications before this date -- I agree it's 4 not crystal clear, but the best interpretation of this, 5 from my perspective, is that the sequence of events is 6 that she asked for permission to use the server, they 7 granted it, and then she communicated. And one of those 8 communications was the communication we're talking 9 about.</p> <p>10 It's not crystal clear. But I think that's 11 the better interpretation of this. And if that's the 12 case, it seems reasonable for her to assume nobody is 13 going to be looking at these communications with her 14 husband, especially since her husband is not -- he's not 15 an employee. This isn't part of company business.</p> <p>16 Do you want to have one last argument about 17 that, sir?</p> <p>18 MR. GEORGE: I think I'll submit on the 19 papers.</p> <p>20 THE COURT: The 352 argument is something to 21 think about. I guess this seems to be three layers of 22 hearsay. So what would be the probative value against 23 these defendants?</p> <p>24 MR. GEORGE: Well, the probative value is that 25 she admits that she's three years behind in looking at 26 the samples to determine whether there's asbestos or 27 not. And that is a statement against interest as well 28 as an admission since she's a corporate representative.</p>	<p style="text-align: right;">Page 163</p> <p>1 THE COURT: Was she separately asked were you 2 behind on the T.E.M.s?</p> <p>3 MR. POPOVICH: Not in this particular 4 transcript. Yes in other transcripts. And I would say 5 if the Court sustains this objection, keeps out the 6 e-mail and when it is quoted, I would not object to a 7 late designation of page/line by the plaintiffs in order 8 to bring that testimony without reference to the e-mail.</p> <p>9 THE COURT: Okay. All right. I'm going to -- 10 I think the marital privilege applies. I will at a 11 break go back and look at the papers, but I have to make 12 a decision because we need to march forward. I think 13 that's the better of the argument.</p> <p>14 Can we bring in the jury.</p> <p>15 16 (The jury entered the courtroom.) 17</p> <p>18 THE COURT: Are we ready?</p> <p>19 MR. POPOVICH: Good afternoon. Thank you for 20 your patience. We had some things to iron out. But it 21 is now my opportunity to speak with you on behalf of 22 Imerys Talc America about what we envision the facts and 23 evidence in this case will show.</p> <p>24 You've heard it emphasized from the time of 25 jury selection, and I will emphasize it again now. It 26 is the evidence that should decide this case. That's 27 what's fair.</p> <p>28 You've now seen pictures of Ms. Henson. Nice</p>
<p style="text-align: right;">Page 162</p> <p>1 THE COURT: I get it. So then it's to do with 2 the T.E.M. --</p> <p>3 MR. GEORGE: Correct.</p> <p>4 THE COURT: Not that an outside lab told 5 Johnson & Johnson, who then told her -- who then told 6 her husband that there was a problem. That's not what 7 you're trying to admit it for. You're trying to admit 8 it for her admission that they were three years behind.</p> <p>9 MR. GEORGE: Well, and also her admission that 10 she acknowledged that there was going to be an expose 11 about asbestos. She knew that somebody was going to 12 write about the fact that there was asbestos in the 13 talc.</p> <p>14 THE COURT: Can't you prove that they were 15 three years behind some other way?</p> <p>16 MR. GEORGE: Only through her testimony, and 17 that's what her testimony is.</p> <p>18 THE COURT: And she doesn't admit it?</p> <p>19 MR. GEORGE: She does in her testimony, but 20 that's what they were trying to exclude.</p> <p>21 THE COURT: Well, I thought they were trying 22 to exclude this document, not what she --</p> <p>23 MR. GEORGE: Well, the document -- in fairness 24 to them, the document is read to her and then she 25 explains what it all means. So they're, I guess, 26 objecting to the component of it that was read to her, 27 which it's very intertwined, so it's difficult to 28 extricate.</p>	<p style="text-align: right;">Page 164</p> <p>1 lady. Fishing with her grandkids. It would be 2 understandable that you would feel sympathy for anybody 3 with cancer, including Ms. Henson. But we need to be 4 focused on the facts here.</p> <p>5 And what we'll talk through is about some of 6 the science that you're going to be hearing. And in 7 particular, we're going to focus on epidemiology. It's 8 a word you've already heard a couple times this morning.</p> <p>9 Epidemiology is a little different than a lot 10 of other scientific disciplines. Epidemiology looks 11 back. A lot of science looks at now and then projects 12 forward. It is epidemiology that we use to study and 13 determine with hindsight -- and the saying is hindsight 14 is 20/20 -- we hope so -- that we look backwards, look 15 at what has happened, look what has happened to people 16 exposed to various substances and determine whether a 17 substance caused a disease.</p> <p>18 So it is with that 20/20 hindsight that we're 19 going to be showing that exposure to raw talc from a 20 mine like those of Cyprus, those of us, and Imerys, us, 21 did not cause Ms. Henson's mesothelioma.</p> <p>22 What the evidence is going to show is that a 23 medical procedure in 2009 to deal with breast cancer was 24 part of the treatment that saved Ms. Henson's life at 25 that time, but unfortunately after nine years that she 26 gained from undergoing the procedure, it's now impacting 27 her future.</p> <p>28 So I've got four what I call signposts.</p>

<p style="text-align: right;">Page 165</p> <p>1 That's each of these boxes here. We're going to talk 2 about the evidence that Ms. Henson did not get 3 mesothelioma from the use of talc-based products. We're 4 going to look at the testing under approved guidelines 5 and how that shows that cosmetic-grade talc does not 6 have asbestos fibers.</p> <p>7 We're going to look at the epidemiology. The 8 science that I'm talking about shows no link between 9 large exposures to raw talc and mesothelioma. And then 10 we're going to talk about at the end, what did cause 11 Ms. Henson's mesothelioma.</p> <p>12 The first signpost is that she did not get it 13 from exposure to talc-based products. To the extent 14 that I end up repeating things that you've already 15 heard, I'm going to shortcut it. There are some things 16 in my presentation in opening statement here that 17 hopefully you did not hear before, but I do not want to 18 waste a lot of time with repetition.</p> <p>19 Obviously I don't know what the other 20 gentlemen here are going to say, so when I prepared 21 this, I anticipated talking about everything. So if I 22 shortcut it, please understand.</p> <p>23 Talc is a mineral. It's in the earth. It has 24 chemical properties, but it is not a manmade chemical. 25 Here's a talc mine that's representative in Vermont. 26 Open mining there. There's a truck carrying out loads 27 of talc.</p> <p>28 So let's talk a little bit about asbestos.</p>	<p style="text-align: right;">Page 167</p> <p>1 If there were no level at which there's no 2 disease, there would be an epidemic of mesothelioma and 3 other asbestos-related cancers. And we absolutely do 4 not hear that.</p> <p>5 You saw earlier statistics of 3,000, 3,200 6 cases of mesothelioma in a year. That's a lot of 7 people. For each individual, that's a big deal. But in 8 the grand scheme of statistics in the United States, 9 each doctor will say that it's a very rare cancer at 10 that number.</p> <p>11 The federal government has through OSHA, the 12 Occupational Safety and Health Administration, set forth 13 permissible exposure limits to many substances, one of 14 which is asbestos. Now, OSHA governs the workplace. 15 There's no claim that Ms. Henson was ever exposed to 16 talcum powder products in a workplace, but these 17 guidelines or standards set out by the federal 18 government do help understand the level of exposures 19 that can happen in a workplace.</p> <p>20 Somebody working eight hours a day, 40 hours a 21 week over years, and there is a level since the 1980s 22 that is permissible. Someone could be exposed to .1 23 fibers/c.c.</p> <p>24 Now, the easiest way to think of a c.c., which 25 is a cubic centimeter, is a sugar cube. Roughly a cubic 26 centimeter. So if it's .1 per c.c., well, you can't 27 have .1 of a fiber. You could have one fiber, and that 28 would be allowed in every ten c.c.s of air in an</p>
<p style="text-align: right;">Page 166</p> <p>1 Asbestos is found naturally in the earth, just like 2 talc. It's a mineral. It can be mined. It can be 3 used. It was literally used in thousands of products at 4 its maximum usage in the '50s and '60s. And asbestos in 5 the earth, there can be outcroppings. Wind, disturbance 6 can release fibers that can be in the air.</p> <p>7 Products that used to be made with asbestos 8 like brakes and clutches and autos, just as an example, 9 when they wear can release asbestos fibers, so that in 10 an urban environment we all breathe asbestos. And 11 you've heard the term that's going to be used for that. 12 When it's not a point source for release of asbestos, we 13 call it background or ambient asbestos.</p> <p>14 Now, you've already heard this part. People 15 because of breathing in this background or ambient 16 asbestos have millions of fibers in their lungs. That's 17 normal. That's not something to be concerned about.</p> <p>18 Science shows that exposure to those levels do 19 not cause mesothelioma. So there is an exposure or what 20 we call a dose that does not cause disease.</p> <p>21 Ms. Henson would be breathing background or 22 ambient air 24/7, 365 days a year, 72 years of her life 23 up to this point. And that is called a lifetime dose of 24 asbestos from background exposures.</p> <p>25 I'm trying to give some terms here because 26 it's going come up during the trial. And hopefully 27 you'll feel somewhat grounded in where we're at and what 28 we're talking about.</p>	<p style="text-align: right;">Page 168</p> <p>1 eight-hour day, 40-hour a week working condition. So 2 there is a level at which people can work around 3 asbestos.</p> <p>4 Dose does make a difference. We've got some 5 common substances here. The fact that you can drink 6 water and stay alive or you can drink too much water and 7 die. Same with coffee. Salt, you can consume too much. 8 Oh, Aspirin with the N kind of fell off its place there.</p> <p>9 So the reason the dose makes the difference is 10 the body is capable of handling certain levels of normal 11 substances like we're talking about or things that 12 potentially could cause disease.</p> <p>13 Now, this part on the left is my absolute 14 favorite slide. You've already heard the term 15 mucociliary escalator. "Muco" for mucus, "ciliary" -- 16 it's the ciliary from the cilia, hairlike structures in 17 the body that literally beat rhythmically together in 18 unison.</p> <p>19 And that little purple bad guy there is some 20 toxin or pollen or allergen that has gotten into the 21 body's airway and the body is removing it. All day long 22 when you're healthy, you have mucus coming into the back 23 of your throat which you swallow and don't even think 24 about. You could expectorate it. That's the way the 25 body defeats some of these toxins. And the body has the 26 ability to handle a certain amount before those defenses 27 are defeated.</p> <p>28 Something else at the cellular level is called</p>

<p style="text-align: right;">Page 169</p> <p>1 a macrophage. For those of you old enough to remember 2 the Pac-Man game, one of the first really fun video 3 games, that waka, waka, waka. Do you remember? 4 But macrophages will be triggered to go to 5 some kind of a toxin. Again, it could be a piece of 6 pollen, a piece of a fiber. It could be a metal shaving 7 or something that's so tiny that it's inhaled. And it 8 has the ability to engulf and remove that from the cell. 9 When the macrophage has engulfed -- and the 10 way it gets removed is it will be taken into the 11 lymphatic system. Kind of a crude description of the 12 lymphatic system is the gutter system of the body. We 13 just had a ton of rain around here last week. I was wet 14 often enough to remember. And the gutter systems whisk 15 away the water and get it out of our streets so that we 16 can drive and not swim. 17 Same with the lymphatic system. Toxins and 18 things like that get removed to the lymphatic system and 19 the lymphatic system takes it into the waste system and 20 out it goes. 21 So these are just some of the body's defenses 22 that when we're talking about very small doses the body 23 can handle it. 24 Now, you're going to hear names. And there's 25 a lot of talk often about corporations ducking 26 responsibility. The evidence will be that in 1979, 27 which as you heard from Mr. Iola's opening statement is 28 essentially the beginning of Imerys, Cyprus providing</p>	<p style="text-align: right;">Page 171</p> <p>1 Just a quick look. You've already heard some 2 of this about the talc testing. There's the X-ray 3 diffraction. Polarized light microscopy. T.E.M., which 4 is transmission electron microscopy, which has the 5 ability to see the smallest of the small, literally 6 magnifying tens of thousands of times. And then the 7 scanning electron microscope. All were used in the 8 testing of the raw talc. 9 So in order to assure that the talc we're 10 selling is the purest that we can find in nature and 11 also before we sell it, there's a process that happens. 12 First you've got to find the mine and figure out whether 13 it's worthwhile to mine for a particular talc, so that 14 geologists look at the initial landscape. They look at 15 whether the mineral composition in the region makes 16 sense for an area to even consider mining. 17 Next step. They do some exploration testing. 18 Core samples are taken. I was going to draw this, but 19 I'm a lousy artist. I'll try to describe it. So if you 20 have an area of land that you think has talc, talc is 21 not going to be everything under the dirt. There's 22 going to be pockets of it or veins of it or however you 23 want to consider it. And they have to define the scope 24 of that talc. 25 If it's just a ton, it's not going to be worth 26 mining. You've got to determine the extent of it and is 27 it worthwhile to mine, and then also the nature of it. 28 They can drill cores down and through the layers of talc</p>
<p style="text-align: right;">Page 170</p> <p>1 raw talc to Colgate for Cashmere Bouquet, it starts in 2 1979. At the time we were a Cyprus entity. 3 It then moved from 1992 to Luzenac America. 4 It's actually a French company, but that was their 5 American subsidiary. And then that in 2011 became 6 Imerys. 7 There's no ducking. If you hear those names, 8 and you will as the evidence comes out, those are 9 Imerys, and we are responsible for them if you find that 10 we did anything wrong. 11 Second signpost. So testing under the 12 approved guidelines shows that cosmetic-grade talc does 13 not have asbestos fibers. 14 Actually when I'm done talking, you will 15 likely see video testimony from Julie Pier. She is a 16 representative of Imerys and has been asked to speak on 17 our behalf and she is a lead scientist for Imerys. She 18 handles and oversees much of the testing of raw talc 19 that's being done, and then that is then sold to the 20 customers. And she's tested thousands of samples. 21 Okay. So she will talk about that process. 22 The testing is done and performed, interpreted 23 under the protocols of the government. Their testing is 24 performed using the equipment that is approved, using 25 the standards that are approved, and then actually 26 Imerys goes on and does further testing on its own using 27 some of the latest equipment to see very small 28 particles.</p>	<p style="text-align: right;">Page 172</p> <p>1 to determine how thick it is, what's above it, what's 2 below it. 3 If they determine that there are areas of 4 minerals other than talc there, and not necessarily 5 asbestos -- there are many other minerals that could be 6 there that would make it an inappropriate place to mine. 7 They can determine those things as best they can. With 8 those corings, they can kind of get an idea of the body 9 of talc that they are considering mining. 10 Then there is a systematic investigation 11 called the infield testing. That's in 60-foot 12 increments. Tests are done, sent to labs and analyzed. 13 Again the analysis is still at this point is it even 14 worthwhile? Is it going to provide us with the type of 15 product that we want? 16 The next step is bigger testing, blast 17 testing. They do that about every ten feet. That again 18 is sent to the laboratory or is collected, lab samples 19 done, and it's part of the assessment process. 20 Now, once the decision is made for the mining, 21 the next step is that when the mine is pulling out talc, 22 analysis occurs. Once the mining and milling process is 23 underway, there are spot checks. There are European 24 subsidiaries, and sometimes they will send theirs to the 25 United States labs; the United States will send it to 26 European labs to check and see if it's consistently 27 finding the same results to make sure that one lab is 28 not testing right and another lab testing wrong or there</p>


<p style="text-align: right;">Page 173</p> <p>1 are discrepancies. And then finally the air in mines in 2 the mills is routinely tested.</p> <p>3 We anticipate that there will be some 4 testimony about count sheets or lab sheets in which 5 these tests that I just described were performed. On 6 occasion there will be a lab sheet that might say that 7 in the sample one chrysotile -- that's one type of 8 asbestos -- one chrysotile fiber is found.</p> <p>9 Finding one chrysotile fiber does not mean 10 that the talc has contamination with asbestos. That was 11 determined because the talc samples would be put in a 12 filter. Because asbestos is all around us, there needs 13 to be concern that there is contamination of the filters 14 because of that. And indeed, when they tested filters 15 without any talc sample at all, sometimes they find a 16 chrysotile fiber. So finding one does not mean that 17 there's contamination of the talc.</p> <p>18 Now, there's going to be a lot of talk about 19 long, thin fibers, whether it is asbestos or whether 20 it's an amphibole -- that's the other family of asbestos 21 fiber -- whether it's an amphibole that has been 22 crushed, and as a result of the crushing, is in the 23 shape, length, very narrow width, and looks like a 24 fiber.</p> <p>25 Is that causing disease? Is that even an 26 asbestos fiber?</p> <p>27 There is sometimes confusion about what is 28 asbestos and what is even a talc fiber. You did not</p>	<p style="text-align: right;">Page 175</p> <p>1 Already talked about that. Now, you will hear 2 testimony through Julie Pier, if not today, then at 3 another time, that there was a time her lab was behind 4 in testing, way behind, such that samples came in and 5 product was actually sold to customers before the 6 testing was done.</p> <p>7 What the evidence will also show is that when 8 they caught up and actually did the testing, no asbestos 9 was found that would have been sold before they did the 10 testing. It was fine, just like all other prior tests 11 had been.</p> <p>12 Third signpost. Science shows no link between 13 large exposures to raw talc and mesothelioma. We focus 14 on the large exposures because the testimony will be 15 that Ms. Henson's exposure, even though it was daily, if 16 there was asbestos contamination of her talc -- you 17 heard Mr. Sharp say we're assuming that for purposes of 18 answering this question -- does this rate as a large 19 exposure?</p> <p>20 The answer is no. It is quite small. But who 21 has large exposures is the miners and the millers. So 22 again, epidemiology. You're going to be very 23 knowledgeable in epidemiology before this is all 24 through, but this is the study of causes, distribution, 25 and control of disease in populations.</p> <p>26 Quick examples. It goes all the way back to 27 the Black Plague that they found out when they detained 28 visitors and didn't let them in amongst the population,</p>
<p style="text-align: right;">Page 174</p> <p>1 hear in plaintiff's opening statement this morning that 2 talc fibers cause mesothelioma. I don't think you will 3 because that's not the science.</p> <p>4 So there needs to be through the evidence 5 understanding of what exactly it is that we're talking 6 about. We need to know where samples are from. We need 7 to know how they were tested. And that will be provided 8 through the evidence, but it needs to be very specific.</p> <p>9 This was just to show again you have the 10 amphibole family and the serpentine family. This is not 11 all six types of asbestos. It's just the four that we 12 anticipate you're going to hear the most about during 13 this. And some, like the serpentine, chrysotile at the 14 bottom there, when it is in asbestiform -- in other 15 words, actually asbestos -- it's called chrysotile. 16 When it is in the nonasbestiform, the rock without being 17 the asbestos, it's called antigorite.</p> <p>18 But -- and you've heard this from Mr. Sharp, 19 when you're talking about anthophyllite, tremolite, and 20 actinolite, they don't have a different name. That's 21 why if you're hearing anthophyllite that may be 22 nonasbestiform.</p> <p>23 The evidence on the defense side will be that 24 nonasbestiform does not cause mesothelioma. So we need 25 to hear is it anthophyllite or is it anthophyllite 26 asbestos, which is the asbestiform. This is getting 27 deep into the science, but you'll learn more as we bring 28 this out through the experts.</p>	<p style="text-align: right;">Page 176</p> <p>1 the disease quit spreading. That was some of the 2 earliest indications that examining a group that was 3 getting sick can lead you to conclusions that helped 4 stop the sickness.</p> <p>5 It was in the 1700s that they found out that 6 citrus juice, citrus fruits can stop scurvy. Probably 7 the most easily identifiable example is smoking. People 8 were getting lung cancers in droves. And they learned 9 that almost all those people smoked. And so it was 10 epidemiology looking back at what's going on that made 11 that connection between smoking and lung cancer so that 12 steps could be taken.</p> <p>13 Well, when you look at the miners and millers, 14 they're the ones who are going to be the most effective. 15 You've got the miners -- it's a dirty job -- in there 16 with the raw talc taking it out of the mines. You've 17 got the millers, people dealing with the refining of the 18 talc into talcum powder that can then be sold to 19 customers and put into things like Cashmere Bouquet.</p> <p>20 These are the people with the highest 21 exposures. Mr. Sharp talked about the fact that they 22 looked -- science looked back at the miners and millers 23 of asbestos, and they were getting sick a lot. Why not 24 go to the people who have the highest exposures if 25 you're going to try to determine is that substance 26 causing a particular disease?</p> <p>27 And what the epidemiology has shown is that 28 when they studied the miners and millers -- there were</p>

<p style="text-align: right;">Page 177</p> <p>1 over 1,722 miners and millers studied over 67 years -- 2 no mesothelioma. When you compare that to asbestos 3 miners and millers, the numbers were outrageously high. 4 The data I just gave you comes from the 5 studies. And every one of the studies came up with a 6 zero. 7 Now, you saw the number on my last slide, 8 1,722, I believe. And if you look at the cohorts here, 9 if you just add those up, a much bigger number, what you 10 understand is that the cohort, the group of workers as a 11 miner or miller was studied multiple times. 12 Some of these studies are looking at the same 13 people. They're looking at them 30 years, 40 years, 60 14 years after their exposures began by working with talc. 15 So there's overlap. 16 But when it comes down to it, these studies 17 show with 20/20 hindsight that people exposed to 18 cosmetic-grade talc do not get mesothelioma. 19 Switching gears with you a little bit. Going 20 back to the medical side. Pleural plaques. Do you 21 remember the pleura is that very thin lining around the 22 lung? There's one part of it that is adhering to the 23 lung. Another part of it that's adhering to the chest 24 cavity. And with those two layers of Saran wrap thin 25 membrane and fluid between, when we breathe we don't 26 have pain. 27 You've heard of the disease pleurisy. That's 28 when there's inflammation in that pleura and breathing</p>	<p style="text-align: right;">Page 179</p> <p>1 Now, her mesothelioma is on the left pleura, 2 but if -- and it's hard to get a visual on this unless 3 you've actually had an anatomy class or something where 4 you've worked with cadaver -- the lung is there's a top 5 part of it, there's a bottom part of it. And it comes 6 all the way over to the midline. 7 And that is where her mesothelioma started is 8 under the sternum, right in the area where the radiation 9 occurred, and it happened about nine years after the 10 radiation. 11 There's a term called latency, which is 12 exposure to disease time period, and the doctors will 13 indicate that when radiation is involved, nine years is 14 plenty of latency. Plenty of time for that radiation to 15 have caused her mesothelioma. 16 That's what the radiation machine looks like. 17 We know from the medical records the model of the 18 radiation machine. And these are pictures of not the 19 one that would have been used for her, but pictures of 20 the same model. 21 More education. Radiation is measured in 22 grays, G-R-A-Y-S. Doses of radiation for treatment are 23 given in centigrays. One gray is a hundred centigrays. 24 Ms. Henson received a standard dose of 5,040 centigrays 25 of radiation and 20 fractions over 38 days. That's 26 where I stopped. 27 Mr. Sharp had 5,940 centigrays, and that's 28 because after this standard dose, which treats the</p>
<p style="text-align: right;">Page 178</p> <p>1 is excruciating pain. It is that process and part of 2 the body that makes that possible. 3 So one of the things that we can look at for 4 someone that might have asbestos exposure is pleural 5 plaques. In that pleura, is there scarring that could 6 have come from asbestos? 7 Now, other things can cause scarring in the 8 pleura, but one of them certainly is asbestos. In 9 Ms. Henson's spot, none. 10 Pleural thickening can also be caused by many 11 things, but one of them is asbestos exposure. If you 12 find it, you need more investigation, but in Ms. Henson, 13 none. 14 The objective signs of asbestos exposure are 15 not in Ms. Henson. The only thing that could arguably 16 be a sign of asbestos exposure in her is mesothelioma. 17 But we do have the ability to look at her condition and 18 decide, find that there is another cause, which we're 19 about to get to. 20 So looking backwards, as I've been talking 21 about, that science, the epidemiology is overwhelming in 22 showing that use of talc, talcum powder is not going to 23 cause the disease mesothelioma. 24 Final signpost, what we believe really caused 25 her mesothelioma. In 2009 she has breast cancer on the 26 right. It's treated with chemo and radiation, and the 27 radiation would have been the entire breast right up to 28 the midline of the sternum.</p>	<p style="text-align: right;">Page 180</p> <p>1 entire breast, there was a focus treatment for 900 more 2 centigrays. 3 Compare the dose she had to a dose that has 4 been considered to cause cancer. It's multiple times 5 that level. When you compare them to ordinary doses of 6 radiation, you could actually get .01 centigrays by 7 flying from New York to London. You can .3 centigrays 8 just for a standard mammogram. So they're small 9 compared to the treatment level of radiation. 10 There will be no dispute among the doctors 11 from any side that radiation causes secondary cancers. 12 It's not just mesothelioma. It can cause many different 13 types of cancers depending on where in the body you're 14 receiving the radiation. It is an acknowledged by 15 medical science cause of mesothelioma. 16 So one of the experts we're going to bring in 17 to talk to you is an expert in radiation oncology. His 18 name is Chris Kelsey. He's going to talk to you about 19 Ms. Henson's radiation treatment. And he's going to 20 talk about where the radiation was and where the 21 mesothelioma started. The plaintiffs will not bring you 22 a radiation oncologist as far as providing testimony. 23 I've already told you about where it was. I 24 want to focus on this last point here. And Mr. Sharp 25 showed you a picture of a wedge. A breast is thicker in 26 places and thinner in places. The wedge helps 27 distribute the radiation in a way so that the thicker 28 part gets more, the thinner part gets less, so that the</p>

<p style="text-align: right;">Page 181</p> <p>1 thinner part is not overradiated and the thicker part is 2 not underradiated.</p> <p>3 One impact of using a wedge is something 4 called scatter. They focus the radiation as much as 5 they can, but they want to make sure that they're 6 covering enough tissue to treat the cancer.</p> <p>7 When you use the wedge, scatter happens, and 8 even would extend into the other side of the chest, so 9 that when there is talk about right breast cancer 10 treatment with radiation, left side of mesothelioma, 11 this scatter can also contribute to reaching the tissue 12 where she ultimately began her mesothelioma.</p> <p>13 Dr. Kelsey will inform you that she received 14 enough radiation to cause her mesothelioma. We're also 15 going to call Dr. Chirieac, who is an expert in 16 pathology. In the United States arguably the best 17 person when it comes down to studying the impact of 18 radiation and what causes radiation-induced cancers.</p> <p>19 And what he has learned through his studies is 20 that when you compare a mesothelioma caused by asbestos 21 to a mesothelioma caused by radiation, they don't follow 22 the same patterns.</p> <p>23 Tumors caused by radiation grow more slowly. 24 You're going to hear in the testimony that based on the 25 latest medical information we have on Ms. Henson that 26 her tumor essentially is not growing right now. She has 27 decided not to undergo treatment. So we know treatment 28 isn't causing the tumor not to grow.</p>	<p style="text-align: right;">Page 183</p> <p>1 she's had a history of heart attacks as well.</p> <p>2 All of these things impact what her life 3 expectancy would be if this cancer never happened.</p> <p>4 And Dr. Brown is a cardiologist from central 5 California, and he'll be brought in to talk about these 6 other issues, the impact on her life expectancy, 7 irrespective of any cancer. And it is his opinion that 8 she will pass away from something other than 9 mesothelioma.</p> <p>10 Ladies and gentlemen, on behalf of Imerys, I 11 very much appreciate your attention following lunch. 12 It's a tough time often. We look forward to presenting 13 this case. And in the end, we will be arguing to you 14 that the evidence reflects that Imerys is being blamed 15 for something it did not do in this courtroom. Okay.</p> <p>16 Thank you so much.</p> <p>17 THE COURT: All right. Thank you to all 18 counsel. Let's start by calling your first witness.</p> <p>19 MR. GEORGE: Your Honor, can we have just a 20 few minutes to adjust the tape?</p> <p>21 THE COURT: Of course. So we're going to 22 have -- the first witness is going to be by videotape 23 and we need a little bit of time to adjust it for you 24 folks. So this would be a good time for a break. So 25 why don't -- how much time are you going to need?</p> <p>26 MR. GEORGE: Like ten minutes.</p> <p>27 THE COURT: All right. Why don't we take 28 approximately a ten-minute break.</p>
<p style="text-align: right;">Page 182</p> <p>1 We know that this is just a natural process. 2 And mesotheliomas caused by asbestos are some of the 3 most aggressive tumors known to science. Hers is not 4 growing.</p> <p>5 So it will be part of Dr. Chirieac's testimony 6 that her mesothelioma was caused by radiation as well.</p> <p>7 Now, one last topic here. And it may seem 8 quite cold to talk about this. But for this jury to 9 understand Ms. Henson's condition, what she's going 10 through, you all need to understand through evidence 11 what her total medical picture is.</p> <p>12 And we will be bringing a doctor -- and I'll 13 show you his picture in a moment -- who will talk about 14 her other conditions other than cancer.</p> <p>15 Ms. Henson has C.O.P.D., which can be a couple 16 different diseases. In her case it's emphysema. And 17 she's a 58-pack-year smoker. She smoked a pack a day 18 since she was young. And at the time we took her 19 deposition last year, she was still smoking.</p> <p>20 When there is discussion about her using 21 oxygen, it's not because of mesothelioma. It's because 22 of C.O.P.D. and emphysema.</p> <p>23 She has a history of strokes, so blood flow to 24 the brain is a problem for her. She has been diagnosed 25 with dementia of a type that is related to lack of blood 26 flow up through the neck. That's consistent with a 27 history of strokes as well. She's got Type 2 diabetes. 28 She's been diagnosed with congestive heart failure. And</p>	<p style="text-align: right;">Page 184</p> <p>1 (Recess taken.)</p> <p>2</p> <p>3 (THE FOLLOWING PROCEEDINGS WERE HELD 4 OUTSIDE THE PRESENCE OF THE JURY:)</p> <p>5</p> <p>6 THE COURT: So off the record the parties 7 agreed that in lieu of the court reporter trying to take 8 down what's on the videotape, we're going to accept a 9 transcript as what was said on the videotape. Can we 10 mark that as an exhibit?</p> <p>11 MR. GEORGE: We can mark it as -- is this the 12 first court exhibit?</p> <p>13 MR. MULARCZYK: If you're separating out the 14 402 hearing, then yes.</p> <p>15 THE COURT: Yes. We are separating out the 16 402 hearing. Would this be the court exhibit?</p> <p>17 MR. GEORGE: This is marked for 18 identification.</p> <p>19 THE CLERK: Court Exhibit 1.</p> <p>20 THE COURT: Okay. We'll call it court 21 Exhibit 1.</p> <p>22</p> <p>23 (COURT Exhibit 1 marked for 24 identification.)</p> <p>25</p> <p>26 THE COURT: Let me just get a clear statement. 27 Do all three sides stipulate that that 28 transcript is a true transcript of what this witness is</p>

<p style="text-align: right;">Page 185</p> <p>1 going to say in the videotape?</p> <p>2 MR. GEORGE: Yes.</p> <p>3 MR. POPOVICH: Yes. And if the video in any</p> <p>4 way -- no offense to our technician, if there's any</p> <p>5 discrepancy, we can point it out afterwards.</p> <p>6 MR. GEORGE: We'll just mark it on the</p> <p>7 transcript so the transcript will actually reflect what</p> <p>8 was played.</p> <p>9 THE COURT: Okay. Plaintiff agree to that?</p> <p>10 MR. IOLA: Yes, Your Honor.</p> <p>11 MR. SHARP: And, Your Honor, on behalf of</p> <p>12 Colgate, Ms. Pier is not being offered as a witness</p> <p>13 against Colgate, and as a result, we have not reviewed</p> <p>14 the testimony. However, we agree for the purposes of</p> <p>15 stipulation that the process that has been agreed on by</p> <p>16 the other parties. So we would so stipulate.</p> <p>17 THE COURT: All right. So you stipulate to</p> <p>18 the transcript which will be Court's Exhibit 1. And</p> <p>19 then I have a special instruction. I take it this is</p> <p>20 the limiting instruction the parties are asking me to</p> <p>21 read to the jury before the tape is played. True?</p> <p>22 MR. SHARP: Yes, Your Honor.</p> <p>23 THE COURT: And everybody stipulates to this</p> <p>24 limiting instruction. Plaintiffs?</p> <p>25 MR. IOLA: Yes.</p> <p>26 MR. POPOVICH: Yes.</p> <p>27 MR. MULARCZYK: Yes.</p> <p>28 MR. GEORGE: Last thing, Your Honor. Just for</p>	<p style="text-align: right;">Page 187</p> <p>1 more quickly.</p> <p>2 All right. So the parties have agreed on a</p> <p>3 certain instruction that I'm going to read to you before</p> <p>4 a videotape deposition is played to you. Okay? Here's</p> <p>5 the instruction.</p> <p>6 You will now be presented testimony and</p> <p>7 exhibits by deposition. A deposition is testimony by an</p> <p>8 individual that is taken prior to trial. At a</p> <p>9 deposition, the witness is sworn to tell the truth, the</p> <p>10 same as in trial.</p> <p>11 You must consider the deposition testimony and</p> <p>12 any exhibits being presented to you in the same way as</p> <p>13 you consider evidence given in court. The witness will</p> <p>14 be testifying as a representative of Imerys Talc</p> <p>15 America, Inc. As such, you may consider this evidence</p> <p>16 only as to Imerys and not Colgate.</p> <p>17 Okay. So this evidence is being submitted</p> <p>18 against Imerys. It is not being submitted against</p> <p>19 Colgate.</p> <p>20 Are we ready?</p> <p>21 MR. IOLA: Yes, Your Honor. At this time the</p> <p>22 plaintiff calls by video deposition, Julie Pier, a</p> <p>23 corporate representative for Imerys Talc America.</p> <p>24 THE COURT: Okay. We're going to dim the</p> <p>25 lights so you can see a little better.</p> <p>26 ///</p> <p>27 ///</p> <p>28 ///</p>
<p style="text-align: right;">Page 186</p> <p>1 your purposes for tonight, this testimony is an hour and</p> <p>2 9 minutes, which will take around 4:00.</p> <p>3 I've got a 20-minute, if you want to play it,</p> <p>4 or I can save it for another time.</p> <p>5 MR. IOLA: To be clear, an additional</p> <p>6 20-minute video that we can play on the back of this if</p> <p>7 we have time, or we can save it. I guess we'll know</p> <p>8 when we get there.</p> <p>9 THE COURT: We'll, that's a close call. Let's</p> <p>10 see what time it actually is, and I'll look at how</p> <p>11 agonized the jury is.</p> <p>12 MR. GEORGE: I'm just giving you a heads up</p> <p>13 that we have it.</p> <p>14 MR. IOLA: Your Honor, can we just take one</p> <p>15 second to lift the screen up?</p> <p>16 THE COURT: Yes. Can we go off the record for</p> <p>17 a moment.</p> <p>18 MR. IOLA: Of course.</p> <p>19</p> <p>20 [Brief pause.]</p> <p>21</p> <p>22 (The jury entered the courtroom.)</p> <p>23</p> <p>24 THE COURT: All right. Welcome back,</p> <p>25 everybody. Sorry for the delay. Just to let you know,</p> <p>26 the delay occurs sometimes because we're talking about</p> <p>27 ways to streamline the case, so we're not trying to</p> <p>28 waste your time. We're trying to make the case go by</p>	<p style="text-align: right;">Page 188</p> <p>1 (Excerpts from the video deposition of</p> <p>2 JULIE PIER were played and not reported</p> <p>3 pursuant to California Rules of Court</p> <p>4 2.1040(d).)</p> <p>5</p> <p>6 THE COURT: All right. I think that's about</p> <p>7 as much information as we're going to give you today.</p> <p>8 We'll see you tomorrow at 9:00 A.M. Have a good night.</p> <p>9</p> <p>10 (The jurors exited the courtroom.)</p> <p>11 (The following proceedings were held</p> <p>12 outside the presence of the jury:)</p> <p>13</p> <p>14 THE COURT: Okay. I just want to make sure</p> <p>15 there wasn't a mistake because I essentially read her --</p> <p>16 almost the entire e-mail read into the record. So I</p> <p>17 don't know what that motion was about.</p> <p>18 MR. GEORGE: That was our agreement.</p> <p>19 MR. POPOVICH: There was no reference to the</p> <p>20 e-mail. There was reference to the facts referenced in</p> <p>21 the e-mail. They took out -- other than one mistake,</p> <p>22 yes. There was some reference to e-mail, but it was</p> <p>23 generic. There's no way the jury would know that's an</p> <p>24 e-mail to her husband.</p> <p>25 I think that captured what I said at the end</p> <p>26 of argument, which is they can get the facts in, not the</p> <p>27 e-mail itself.</p> <p>28 THE COURT: I just wanted to make sure there</p>

<p style="text-align: right;">Page 189</p> <p>1 wasn't a mistake.</p> <p>2 MR. GEORGE: We protected her privacy.</p> <p>3 THE COURT: Anything we need to talk about</p> <p>4 before we go off the record?</p> <p>5 MR. GEORGE: So for the exhibits, this</p> <p>6 deposition -- if the defendant doesn't have any</p> <p>7 objection, if he wants me to put the true exhibit</p> <p>8 numbers on it, I'll do that this evening and we'll do</p> <p>9 that in the morning and admit it.</p> <p>10 THE COURT: Great. And perhaps the parties</p> <p>11 can stipulate that certain exhibits were talked about in</p> <p>12 the deposition. I mean, I was trying to take notes.</p> <p>13 Are you going to try to have them admitted into</p> <p>14 evidence?</p> <p>15 MR. GEORGE: Yes.</p> <p>16 THE COURT: Okay.</p> <p>17 MR. GEORGE: We'll do it in the morning.</p> <p>18 There's no objection from the defense. I'll show them</p> <p>19 what I'm going to admit before I admit it.</p> <p>20 THE COURT: All right. Great.</p> <p>21 MR. POPOVICH: And we would need to give the</p> <p>22 jury a reference point that Exhibit 4 in the deposition</p> <p>23 equals exhibit -- trial exhibit whatever.</p> <p>24 MR. GEORGE: What I could do is I'll just put</p> <p>25 the true exhibit number on the document, and then the</p> <p>26 exhibit number that was in the deposition will be here</p> <p>27 as well.</p> <p>28 MR. POPOVICH: As long as it's clear, that's</p>	<p style="text-align: right;">Page 191</p> <p>1 Gordon paper, and so ultimately the court ended up</p> <p>2 saying instead of keeping them both out, I'm going to</p> <p>3 let them both in. And that's how we ended up with the</p> <p>4 ruling that we did.</p> <p>5 He ultimately overruled himself as to the</p> <p>6 Rubino paper but only because he let in the Gordon</p> <p>7 paper, and he saw them as very similar and having</p> <p>8 similar issues.</p> <p>9 If the court is going to ultimate -- and I'm</p> <p>10 not saying that this is the court's directive, but if</p> <p>11 the court was inclined to keep out the Gordon paper and</p> <p>12 the samples, I think the court has to revisit</p> <p>13 plaintiff's motion in limine No. 8 on the epidemiology</p> <p>14 in all fairness and to be consistent with what happened</p> <p>15 in front of Judge Byrdsong, and I think you'll see the</p> <p>16 issues. I know Your honor has not read this motion.</p> <p>17 I'm talking in the abstract. I would simply recommend</p> <p>18 that we can provide a copy to the court if the court</p> <p>19 does not have one. Think on it, and then we can talk</p> <p>20 about it a little bit later.</p> <p>21 THE COURT: I think you make a good point. I</p> <p>22 don't know if we necessarily need to go back to whatever</p> <p>23 Judge Byrdsong said, but I think you make a good point</p> <p>24 in that we want to make sure the rulings are consistent</p> <p>25 in both directions.</p> <p>26 So if there is -- if there is an objection to</p> <p>27 some study because of chain of custody issues that are</p> <p>28 similar -- no? We've got a shaking of the head. I'll</p>
<p style="text-align: right;">Page 190</p> <p>1 fine.</p> <p>2 THE COURT: I think it is a good idea to maybe</p> <p>3 come up with a stipulation. For example, deposition</p> <p>4 Exhibit 4 for Julie Pier is Exhibit 86 or whatever it is</p> <p>5 here. So that there's no confusion.</p> <p>6 MR. GEORGE: I can do that as I introduce them</p> <p>7 so the jury will have an idea of how they match up.</p> <p>8 THE COURT: Okay. Great. Anything else we</p> <p>9 need to talk about on the record? Housekeeping?</p> <p>10 MR. IOLA: Yes. Very briefly, Your Honor. I</p> <p>11 obviously have the court's ruling in regards to</p> <p>12 Dr. Finkelstein. I wanted to bring the court's</p> <p>13 attention to one thing.</p> <p>14 I understand the court's -- the court's ruling</p> <p>15 about Dr. Finkelstein's ability to rely on the Gordon</p> <p>16 paper and the samples. That won't be allowed. I did</p> <p>17 want to bring the court's attention that at the hearing</p> <p>18 with Judge Byrdsong, the plaintiffs had a motion in</p> <p>19 limine No. 8, which was in regards to all the Italian</p> <p>20 epidemiology studies.</p> <p>21 And if I'm reading the tea leaves a little bit</p> <p>22 on the court's order in regard to Dr. Finkelstein, I</p> <p>23 think it's important that Your Honor understand that</p> <p>24 Judge Byrdsong in the transcript of the hearing said</p> <p>25 that for the Italian epidemiology studies, he was</p> <p>26 inclined and actually did grant the motion excluding the</p> <p>27 studies on chain of custody and authentication issues</p> <p>28 that are very similar to what we're dealing with in the</p>	<p style="text-align: right;">Page 192</p> <p>1 keep an open mind to that.</p> <p>2 So what is it I should be doing now? Are you</p> <p>3 seeking to exclude some study based on what you think</p> <p>4 are similar arguments of chain of custody that you think</p> <p>5 I should revisit? Is that fair?</p> <p>6 MR. IOLA: Exactly, Your Honor. I think if</p> <p>7 you just read plaintiff's motion in limine No. 8 to</p> <p>8 exclude the Rubino study and all the other Italian</p> <p>9 epidemiology studies that come after it and you read the</p> <p>10 defense's opposition, that will be plenty for the court</p> <p>11 to understand the interaction between these motions,</p> <p>12 especially considering that on Colgate's urging, the</p> <p>13 court read the motions in limine No. 1 and No. 2 in</p> <p>14 regards to Gordon, and I think this dovetails nicely</p> <p>15 with that, and I would simply recommend the court read</p> <p>16 it, and then we'll have the discussion at a later time.</p> <p>17 THE COURT: Is it fair to say you disagree</p> <p>18 with their argument that it's a mirror image? Is that</p> <p>19 fair to say?</p> <p>20 MR. MULARCZYK: Absolutely.</p> <p>21 THE COURT: All right. I don't know the</p> <p>22 answer.</p> <p>23 MR. MULARCZYK: So to say that it deals with</p> <p>24 samples and chain of custody, I guess the court will</p> <p>25 find out when it reads the papers if it decides to do</p> <p>26 so.</p> <p>27 I don't think that anything the court learned</p> <p>28 via Finkelstein about the samples is at all related to</p>

<p style="text-align: right;">Page 193</p> <p>1 what the issue about epidemiological studies is. It's 2 apples and oranges. To be fair, in terms of how this is 3 being addressed right now, this seems to me this is an 4 argument that should have been made at the time we were 5 arguing this before openings took place, not to throw 6 this in now knowing what the circumstances are and the 7 openings hadn't taken place. 8 So the appropriate time to have raised this, 9 if we were bargaining, which is what Mr. Iola is doing 10 now based on the court's ruling, is that, well, hey 11 you've ruled this way, then let's go ahead and revisit 12 that other thing. 13 THE COURT: To be clear, I don't think there's 14 any bargaining going on, and I think this could come up 15 in the sense that you're going to try to get in certain 16 evidence and they make an evidentiary objection, I 17 should be prepared for that evidentiary objection. 18 So I think it is worth looking at those 19 arguments and perhaps considering some kind of argument 20 outside the presence of the jury. I don't think 21 anything I did with respect to Dr. Finkelstein 22 necessarily relates to this, but it's certainly worth 23 looking at. I'm going to do my best to be 24 intellectually consistent. 25 MR. MULARCZYK: I have no problem with that. 26 So does that mean that the court wants to be prepared to 27 talk about this tomorrow morning before we start with 28 witnesses or what does --</p>	<p style="text-align: right;">Page 195</p> <p>1 whether the court will read this and feels that this 2 can't be raised at all. I don't know what the court 3 will do with this. So it's just as much of an issue 4 during cross-examination as it is in the defense case, 5 so it's coming up sooner rather than later. 6 THE COURT: All right. Well, I haven't made 7 any rulings. I'm just listening to what you're saying. 8 Anything else we need to say on the record, or 9 can we go off the record? 10 MR. IOLA: No, not from the plaintiffs. 11 MR. POPOVICH: Off the record is fine. 12 13 (At 4:22 P.M. the proceedings were 14 adjourned.) 15 * * * 16 17 18 19 20 21 22 23 24 25 26 27 28</p>
<p style="text-align: right;">Page 194</p> <p>1 THE COURT: I don't think so. This sounds 2 like this would come in when the defendants start their 3 case so we have a little bit of time to deal with this, 4 and I think plaintiff's counsel was just giving me the 5 heads up this is an argument we're going to be making, 6 so maybe you should prepare for it, Judge. 7 MR. IOLA: That's exactly right, Your Honor. 8 And I just -- you know, the allusion that 9 Mr. Mularczyk made to me sitting on this intentionally 10 when I received the court's ruling minutes before I 11 opened. I opened the entire morning, listened to the 12 other side, and then I finally got to read the decision 13 in its entirety at lunch -- I just have to say is wrong, 14 and it's not something that I would intentionally do. 15 I'm bringing it up to the court as soon as I 16 possibly can. I just feel an obligation to say that, 17 Your Honor, and I apologize if it takes up your time. 18 THE COURT: No, no. I understand that. I'm 19 going to decide any motions on the merits, not on what 20 we just talked about as far as timing of bringing up the 21 objection. I'm going to look at each thing on the 22 merits. Maybe it is the mirror image; maybe it isn't. 23 But it's worth looking at so that I'm prepared for an 24 argument that plaintiff says he's going to make. 25 MR. GEORGE: You have copies of the MILs? 26 THE COURT: I think so. 27 MR. MULARCZYK: This will also come up in the 28 context of cross-examination as well. So I don't know</p>	<p>1 SUPERIOR COURT OF THE STATE OF CALIFORNIA 2 FOR THE COUNTY OF LOS ANGELES 3 DEPARTMENT 3 HON. ARMEN TAMZARIAN, JUDGE 4 5 LAOSD ASBESTOS CASES) JCCP Case No. 4674 6) 7 DIANNE HENSON,) 8) 9 Plaintiff,) Case No. BC702253 10) 11 vs.) 12) 13 COLGATE-PALMOLIVE COMPANY, A) 14 DELAWARE CORPORATION WITH ITS) 15 PRINCIPAL PLACE OF BUSINESS IN THE) 16 STATE OF NEW YORK, ET AL.,) 17) 18 Defendants.) 19) 20) 21) 22) 23) 24) 25) 26) 27) 28)</p> <p>1 I, DEBORAH MORIN, CSR NO. 11558, OFFICIAL REPORTER 2 PRO TEMPORE OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, 3 FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE 4 FOREGOING PAGES, 151 THROUGH 195, COMPRISE A FULL, TRUE AND 5 CORRECT TRANSCRIPT OF THE PROCEEDINGS AND TESTIMONY TAKEN IN 6 THE ABOVE-ENTITLED CAUSE ON JANUARY 22, 2019. 7 DATED THIS 23RD DAY OF JANUARY, 2019. 8 9  10 _____, CSR NO. 11558 11 DEBORAH MORIN, OFFICIAL REPORTER 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28</p>